

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER SCOTT COLLINS,

Defendant-Appellant.

UNPUBLISHED
February 12, 2004

No. 244658
Wayne Circuit Court
LC No. 01-011695

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from a conviction of second-degree murder, MCL 750.317, for which he was sentenced as an habitual offender, third offense, MCL 769.11, to thirty-five to sixty years in prison.¹ We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with first-degree murder, MCL 750.316, for the stabbing death of Christopher King. Defendant presented a defense of intoxication. The court found that the killing was not premeditated and convicted defendant of second-degree murder. Defendant contends that because there was evidence of intoxication, he could not have committed second-degree murder and should have been convicted instead of involuntary manslaughter. We disagree.

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The trial court's factual findings are reviewed for clear error. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). A finding of fact is considered "clearly erroneous if, after review of the

¹ Defendant was also convicted of larceny in a building, MCL 750.360, for which he was sentenced to five to eight years in prison. That conviction is not at issue here.

entire record, the appellate court is left with a definite and firm conviction that a mistake has been made.” *Id.*

To prove first-degree murder, the prosecutor must show that the defendant intentionally killed another person and that the killing was premeditated and deliberate. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). First-degree murder, other than felony-murder, is a specific intent crime. *People v Herndon*, 246 Mich App 371, 386; 633 NW2d 376 (2001).

First-degree murder minus premeditation is second-degree murder. *People v Carter*, 395 Mich 434, 437; 236 NW2d 500 (1975). “The elements of second-degree murder are: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse.” *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). Second-degree murder is a general intent crime which requires proof of malice. *People v Abraham*, 256 Mich App 265, 269; 662 NW2d 836 (2003). “Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.” *Goecke, supra* at 464. Malice may be inferred from all the surrounding facts and circumstances of the killing, *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993), including the use of a deadly weapon, *People v Turner*, 213 Mich App 558, 567; 540 NW2d 728 (1995), and “evidence that a defendant intentionally set in motion a force likely to cause death or great bodily harm.” *People v Flowers*, 191 Mich App 169, 177; 477 NW2d 473 (1991).

The evidence showed that defendant caused the death of Christopher King by stabbing him in the chest. Even assuming that defendant did not go to King’s house with the intent to kill him, one could reasonably infer from the circumstances of the stabbing that he acted with the intent to kill or to cause great bodily harm. Because voluntary intoxication is not a defense to second-degree murder, *Goecke, supra* at 464, evidence of defendant’s possible intoxication would not reduce the killing to involuntary manslaughter. Moreover, the evidence failed to support a finding of involuntary manslaughter because stabbing another person in the chest with a knife is not a lawful act and the act is one which would naturally tend to cause death or great bodily harm. *People v Cummings*, 229 Mich App 151, 154-155; 580 NW2d 480 (1998), rev’d on other grounds 458 Mich 877 (1998).

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O’Connell
/s/ Karen M. Fort Hood